



**SECURITIES AND EXCHANGE COMMISSION**  
**[Release No. 34-97439; File No. SR-OCC-2023-002]**

**Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Proposed Rule Change by The Options Clearing Corporation Concerning the Amendment of its Clearing Membership Standards**

May 5, 2023.

**I. INTRODUCTION**

On March 3, 2023, the Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change SR-OCC-2023-002 pursuant to section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder. The proposed rule change concerns proposed changes to OCC’s standards for its members. The proposed rule change was published for public comment in the Federal Register on March 21, 2023.<sup>3</sup> The Commission has received no comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

**II. BACKGROUND<sup>4</sup>**

OCC acts as the central counterparty (“CCP”) for all listed options in the U.S., as well as for certain futures. It provides clearing services to its members, which are financial organizations that, in turn, facilitate the clearing and settlement of their customer transactions or proprietary transactions through OCC. OCC is proposing to change its rules that address standards for its membership by (i) expanding its membership types and updating its membership requirements

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 97150 (Mar. 15, 2023), 88 FR 17046 (Mar. 21, 2023) (File No. SR-OCC-2023-002) (“Notice of Filing”).

<sup>4</sup> Capitalized terms used but not defined herein have the meanings specified in OCC’s Rules and By-Laws, available at <https://www.theocc.com/about/publications/bylaws.jsp>.

and associated processes, including on-boarding and off-boarding procedures; (ii) amending members' financial responsibility standards; (iii) amending members' operational requirements; and (iv) changing rules governing disciplinary actions.

*(i) Member eligibility, on-boarding, and termination*

OCC proposes rule changes to expand the types of entities that are eligible to become Clearing Members, while removing distinctions between certain membership categories to ensure consistent requirements across members. The proposed rule changes would also consolidate and streamline the procedures and requirements for admitting new members. Further, the proposed rule changes would allow a member to elect to voluntarily terminate its membership.

Currently, OCC's Articles and By-Laws permit three different types of institutions eligible for clearing membership: (i) broker-dealers, (ii) futures commission merchants, and (iii) non-U.S. securities firms. The proposed rule change would expand the list of eligible institutions to include certain banks.<sup>5</sup> OCC proposes limiting bank membership to clearing proprietary activity only. The proposed rules would also require a bank member to provide assurances regarding its activities and ability to contribute collateral.

In addition to expanding its list of eligible institutions to include banks, OCC proposes additional revisions to member eligibility. For example, proposed Rule 201(b)(5) would clearly state the types of members who may clear stock loan transactions (i.e., broker-dealers, non-U.S. securities firms, or banks). Similarly, proposed Rule 201(d) requires that each member meet standards related to risk management capability, in addition to the current requirements related to financial and operational capabilities.

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<sup>5</sup> OCC also proposes relocating the list of eligible institutions in its rules from Article V of the By-Laws to new Rule 201(a)(1) through (a)(3).

The proposed rule change is designed to accommodate the admission of non-U.S. Clearing Members other than Canadian Clearing Members.<sup>6</sup> Broadly, the changes would require that such members not conduct transactions or activities that would result in the imposition of taxes, withholding, or reporting obligations with respect to amounts paid or received by OCC (other than U.S. federal and state income taxes imposed on OCC's income).<sup>7</sup>

The proposed rule change would consolidate the admission procedures and requirements and modify such admission procedures and requirements to help streamline the application review process.<sup>8</sup> For example, proposed Rule 203(b) would include information about expedited approval through OCC's Risk Committee, if the approval of the applicant is appropriate for the protection of investors and the public interest. Moreover, proposed Rule 203(c) would allow for Clearing Members to clear additional types of transactions by requesting authorization from OCC through a business expansion request.

The proposed rule change would amend the conditions for admission as an OCC member.<sup>9</sup> Such amendments would impose requirements on applicants (e.g., an applicant must notify OCC in writing if it is or becomes subject to Statutory Disqualification)<sup>10</sup> as well as make

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<sup>6</sup> OCC also proposes relocating existing Article V, Section 1, paragraph (e) of the By-Laws and Rule 310(d) to new Rule 202.

<sup>7</sup> Relatedly, OCC also proposes to move various defined terms from its Bylaws to Chapter 1 of its Rules, such as: Canadian Clearing Member, FATCA, FATCA Compliant, FFI Clearing Member, Non-U.S. Regulatory Agency, Non U.S. Securities Firm, Qualified Intermediary Assuming Primary Withholding Responsibility, and Qualified Derivatives Dealer.

<sup>8</sup> OCC also proposes relocating existing Article V, Section 2 and Article V, Section 1, Interpretation and Policy .03, clause (e) of the By-Laws to new Rule 203.

<sup>9</sup> OCC also proposes consolidating such provisions currently set forth in existing Article V, Section 3 and various other portions of Article V of the By-Laws into new Rule 204.

<sup>10</sup> OCC proposes to move the definition of Statutory Disqualification from its By-Laws to Chapter 1 of its rules, move the majority of its current Rule 217 regarding Statutory Disqualification to proposed Rule 308, and remove certain provisions related to hearings that are duplicative of authority under OCC's rules.

less substantive updates (e.g., removal of a duplicative choice of law provision addressed elsewhere in OCC's rules). The changes also describe, with minor clarifying changes, the terms of a new member's initial contribution and agreements; disapproval where an applicant engages in acts or practices inconsistent with "just and equitable principles of trade;" and other admission conditions.

The proposed rule change would adopt new Rule 212 to address circumstances in which a Clearing Member may elect to voluntarily terminate its membership. OCC's current Rules include information about voluntary membership termination, but only under certain specific circumstances, such as if the member's Clearing Fund contribution is increased as a result of an amendment of the Rules,<sup>11</sup> or during a cooling-off period.<sup>12</sup> Among other things, proposed Rule 212 would provide that a Clearing Member may elect to voluntarily terminate its membership by providing written notice to OCC that specifies a desired date for its withdrawal from membership. The terminating Clearing Member will be required to close out or transfer all open positions with OCC by the termination date.

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<sup>11</sup> See OCC Rule 1002(e).

<sup>12</sup> See OCC Rule 1006(h)(C). Proposed Rule 212(d) would clarify that any Voluntary Termination Notice provided during a cooling-off period implemented pursuant to Rule 1006(h) would be subject to the requirements of Rule 1006(h).

Additionally, OCC proposes to relocate existing rules,<sup>13</sup> remove distinctions between certain membership categories to ensure consistent requirements across members,<sup>14</sup> and remove rules regarding implementation dates that have already passed.<sup>15</sup>

*(ii) Financial responsibility standards*

OCC proposes to eliminate the current distinction between initial and ongoing capital requirements for its members.<sup>16</sup> OCC also proposes to increase the minimum financial requirements for members and set out requirements for banks as a new member category.<sup>17</sup> The current broker-dealer and FCM minimum requirement of \$2.5 million in initial capital and adjusted net capital would be increased to \$10 million in net capital and adjusted net capital.<sup>18</sup>

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<sup>13</sup> OCC proposes to relocate requirements applicable to Canadian Hedge Clearing Members on behalf of which CDS maintains an identifiable sub-account at DTC to existing Rule 2201, which addresses instructions provided to OCC. Specifically, OCC would propose relocating portions of existing Article V, Section 1, Interpretation and Policy .07 to Rule 2201(c) and (d).

<sup>14</sup> OCC proposes to replace the following distinct membership categories with general references to “Clearing Member” and make them subject to the standards for all Clearing Members: Canadian Hedge Clearing Member; Domestic Clearing Member; Exempt Non-U.S. Clearing Member; Futures-only affiliated Clearing Member; Hedge Clearing member; Managed Clearing Member; Managing Clearing Member; and Market Loan Clearing Member. OCC proposes to maintain the concept of Appointing Clearing Members and Appointed Clearing Members, but these members would no longer be subject to distinct or different membership standards.

<sup>15</sup> OCC proposes to remove defined terms “Section 871(m) Effective Date” and “Section 871(m) Implementation Date” as well as references to these terms because these dates have passed and the defined terms are no longer necessary.

<sup>16</sup> OCC proposes to replace current Rules 301 and 302, which set forth initial financial requirements and ongoing net capital requirements, respectively, with new Rule 301.

<sup>17</sup> OCC would continue not to permit opening purchase transactions, opening sale transactions, or entering into a Stock Loan by members not meeting such standards. OCC proposes to move the language related to this requirement from current Rule 302(a) to proposed Rule 301(b). The proposed rule change would also delete existing Rule 309A, which sets forth minimum capital and other requirements for Appointed Clearing Members because these concepts are no longer a distinct membership type.

<sup>18</sup> For broker-dealers, the minimum net capital would be equal to the greater of (i) \$10 million; (ii) 6 2/3% of its aggregate indebtedness (in the case of a broker-dealer that does not elect to operate pursuant to the alternative net capital requirements); or (iii) 2% of its

Similarly, OCC proposes to set capital requirements for Canadian Investment Dealers and Non-U.S. Securities Firms at \$10 million generally.<sup>19</sup> The proposed rule change also introduces capital requirements for banks as a new type of Clearing Member. Specifically, U.S. banks would be required to maintain Tier 1 Capital of at least \$500 million, a Tier 1 Capital Ratio greater than 6%, and be either “well-capitalized” or “adequately-capitalized” as measured by prompt corrective action (“PCA”) capital category ratios applicable to such U.S. Banks. OCC represents that, upon Commission approval of the proposed rule change, OCC would provide a six-month grace period for existing Clearing Members to meet the proposed increase in capital requirements.<sup>20</sup>

*(iii) Operational requirements*

OCC proposes changes to rules governing certain operation requirements and processes for its members. As described below, such changes include, but are not limited to, the acceptance of e-signatures, record retention requirements, and the consolidation of existing rules.<sup>21</sup>

OCC proposes changes to its rules designed to reflect changes in technology. OCC proposes to expand its rules to permit the reliance on electronic signatures, in addition to reliance on an original signature.<sup>22</sup> Additionally, OCC proposes to remove references to authorization

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aggregate debit items (in the case of a broker-dealer that elects to operate pursuant to the alternative net capital requirements). For FCMs, the minimum net capital would be equal to the greater of (i) \$10 million or (ii) any other minimum financial requirements established by regulation of the Commodity Futures Trading Commission.

<sup>19</sup> The change would increase the current warning reserve requirement from \$2.5 million to \$10 million for Canadian Investment Dealers.

<sup>20</sup> See Notice of Filing, 88 FR at 17052.

<sup>21</sup> OCC also proposes relocating its current Rule 203 (requiring members to establish and maintain a bank account in a Clearing Bank for each account maintained by it with OCC) to proposed Rule 206. OCC proposes no changes to the text of current Rule 203.

<sup>22</sup> OCC stated that the change is intended to better reflect evolving technology and the means by which signatures generally may be accepted. See Notice of Filing, 88 FR at 17051. OCC also proposes to renumber current Rule 202, which discusses such signature requirements, as new Rule 205.

stamps as a security measure because OCC no longer uses such stamps.<sup>23</sup> Additionally, OCC proposes removing its current Rule 204 that requires members to designate physical locations as clearing offices of the Clearing Member, because the rule is no longer relevant to OCC's operations or to its Clearing Members given the migration of trading, clearance and settlement activities to electronic means.

OCC proposes changes to its rules regarding various submissions and reports between OCC and its members. OCC proposes to align its rules regarding the submission to and retrieval from OCC of documents by Clearing Members.<sup>24</sup> The proposed rules also permit OCC to disregard untimely submissions from a Clearing Member, except in unusual or unforeseen circumstances. Additionally, OCC proposes to require that it post proposed rule changes on its website after (rather than before) filing such changes to provide notice to members.<sup>25</sup>

OCC also proposes to reorganize and update various rules pertaining to member processes and operational requirements. With regard to member processes, OCC proposes to streamline its rule regarding record retention requirements for Clearing Members to state that such requirements apply to all confirmed trade data required pursuant to the By-Laws and Rules, including confirmed trade information reported to OCC under Rule 401.<sup>26</sup> With regard to operational requirements, OCC proposes to consolidate existing provisions regarding Clearing

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<sup>23</sup> OCC proposes to renumber its current Rule 212 regarding security measures (including authorization stamps) as proposed Rule 209.

<sup>24</sup> To facilitate this alignment, OCC proposes to combine its current Rules 205 (submissions by members) and 206 (retrievals from OCC) into proposed Rule 207.

<sup>25</sup> Rule 19b-4(l) under the Exchange Act requires OCC to post each proposed rule change to its website within two business days of filing such change. 17 CFR 240.19b-4(l). OCC further proposes to consolidate its current Rules 208, 211, and 213 (regarding reports and notices by OCC) in proposed Rule 211 subject to the modifications described here.

<sup>26</sup> OCC's current rule requires retention of such information by referencing specific types of information by product (e.g., the series, trade price, and trade date with respect to confirmed trades in BOUNDS). In addition to the modifications described here, OCC proposes to renumber its current Rule 207 regarding record retention requirements as proposed Rule 208.

Members' operational capability in proposed Rule 302.<sup>27</sup> In addition to consolidation, OCC proposes the following changes to such requirements:

- Adopt a new general statement requiring members to meet OCC's operational capability, experience and competence standards;
- Require that an authorized representative of each Clearing Member be available during regular and overnight business hours;
- Simplify and standardize the record keeping requirements applicable to each Clearing Member;
- Clarify that each Clearing Member must be able to participate in applicable operational and default management activities; and
- Make additional minor clarifying changes.

Proposed Rule 302 would also set forth the requirement that Clearing Members must maintain operationally sufficient facilities, systems, and procedures to discharge their clearing functions in a timely and efficient manner. The proposed rule also provides additional operational requirements for Clearing Members that effect transactions in physically-settled equity options and stock futures, or participate in OCC's stock loan programs.

Further, OCC proposes to apply its existing rules regarding an applicant's financial, operations, and risk management personnel to OCC Clearing Members.<sup>28</sup> Under OCC's current rules, different personnel requirements exist for applicants and Clearing Members. OCC's proposal would make such requirements the same for both. In addition to applying the personnel requirements for applicants to Clearing Members, OCC proposes to change such standards as follows. Proposed Rule 303(a) would provide that every applicant and Clearing Member must employ personnel or maintain contractual arrangements with third-party service providers acceptable to OCC with substantial experience in clearing the kind(s) of cleared contracts applicable to the applicant or Clearing Member. Proposed paragraph (b) would require Clearing

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<sup>27</sup> Proposed Rule 302 is a consolidation of requirements set forth in the existing By-Laws and the Rules, including Article V, Section 1, Interpretations and Policies .02, .07 and .07A of the By-Laws and current Rule 201.

<sup>28</sup> As an organizational matter, OCC proposes to consolidate the personnel requirements set forth in Article V, Section 1 of the By-Laws as well as current Rule 214 in proposed Rule 303.



Members to employ personnel or retain third-party service providers responsible for Clearing Members' compliance with applicable net capital, recordkeeping and other financial, operational, and risk management rules. Proposed paragraph (c) would require Clearing Members to ensure that they employ an appropriate number of clearing operations personnel or retain third-party service providers with requisite capability, experience, and competency, among other requirements. The proposed Rule also sets forth additional requirements for contractual arrangements with third-party personnel, as well as requirements for replacing relevant personnel or third-party providers who are being separated or terminated from OCC. The proposed modifications to the existing financial, operations, and risk management personnel requirements include eliminating the requirements for Managed Clearing Members and Managing Clearing Members, and removing references to facilities management agreements, Managing Clearing Members and Managed Clearing Members. These requirements, in current Rule 309, would be replaced by proposed Rule 303's more general rules for outsourcing third-party service providers. According to OCC, the modifications are intended to reduce administrative burdens and provide OCC and its Clearing Members with greater flexibility.<sup>29</sup>

OCC proposes to add two new rule provisions designed to expand its rules related to operational and default management testing.<sup>30</sup> The first would state that OCC will periodically designate Clearing Members required to participate in business continuity and disaster recovery testing. The second would state that OCC may require Clearing Members to participate in other operational and connectivity testing and related reporting requirements that OCC deems necessary to ensure the continuing operational capability of the Clearing Members and the continuing ability of OCC to perform its clearing, settlement, and risk management activities.

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<sup>29</sup> See Notice of Filing, 88 FR 17055.

<sup>30</sup> As an organizational matter, OCC proposes to move existing Rule 218 regarding operational and default management testing to proposed Rule 304 subject to the changes described here. Additionally, OCC proposes a few non-material changes (e.g., replacing "will" with "shall").

OCC proposes three sets of changes to its rules regarding notification and reporting requirements for Clearing Members.<sup>31</sup> First, OCC proposes to add a rule stating that each Clearing Member must provide to OCC such notices, reports, documentation, or other information required in the Rules and any other requirements promulgated by OCC. In contrast, OCC's current rules prescribe a series of narrow notice requirements under specific circumstances such as currently requiring "prompt" written notice (rather than 30-day prior written notice).

Second, OCC proposes to change the requirements for event-based reporting by Clearing Members.<sup>32</sup> Specifically, proposed Rule 306A(a) would require Clearing Members to provide early-warning notices to OCC of any financial or operational difficulty, or any instances where a Clearing Member fails to meet certain financial or operational thresholds, depending on the nature of the Clearing Member's business. For example, if the Clearing Member is a fully-registered broker-dealer and fails to meet specific thresholds for net capital, it would need to provide an early-warning notice to OCC. The proposed rule also provides the specific circumstances where early-warning notices would be required from other Clearing Member types, such as fully-registered FCMs, non-U.S. securities firms, and banks. Proposed Rule 306A(b) sets forth the requirements for Clearing Members to report material changes to their organizational structure, finances, or operations; their intentions to enter into, terminate, or alter outsourcing activities; and provide other types of event-based reporting or responses to information requests from OCC. Proposed Rule 306A(c) provides the statutory disqualification notification requirements for Clearing Members.

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<sup>31</sup> These requirements would be consolidated from various provisions of the By-Laws and Rules, including existing Article V, Section 1, Interpretations and Policies .03 and .07 of the By-Laws and Rules 201(b), 215, 216, 217(b), 303, 306, 308, and 310(a)-(c).

<sup>32</sup> OCC's current event-based reporting requirements for members, set forth in existing Article V, Section 1, Interpretations and Policies .03 (clause (c)) and .07 of the By-Laws and existing Rules 201(b), 215, 217(b) and 303, would be consolidated in proposed Rule 306A.

Third, OCC proposes to change the requirements for periodic reporting by Clearing Members.<sup>33</sup> The proposed rule would cover periodic reporting of financial reports and annual audited financial statements, as well as the timing and frequency of such reporting, including providing OCC discretion to allow for extensions.

*(iv) Protective measures and disciplinary actions*

OCC proposes to change its rules related to (i) the imposition of protective measures on Clearing Members who may pose a risk to OCC and (ii) disciplinary actions OCC may take in response to violations of its rules. With regard to the imposition of protective measures, OCC proposes to adopt new Rule 307, which would grant OCC the authority to impose broader protective measures on a member or applicant that (i) is approaching or does not meet OCC's minimum membership standards or fails to provide information such that OCC is unable to determine whether it meets the minimum membership standards, (ii) presents increased credit or liquidity risk to OCC, (iii) is subject to enhanced monitoring and surveillance under OCC's watch level reporting process, or (iv) whose financial condition, operational capability, or risk management capability otherwise makes it necessary or advisable, for the protection of OCC, other Clearing Members, or the general public.<sup>34</sup> Although proposed Rule 307 would not provide OCC with entirely new authority to impose protective measures, it would clarify that OCC has the authority to impose such measures under a broader set of circumstances, not just on Clearing Members, but on applicants for membership as well. Additionally, OCC proposes to modify two

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<sup>33</sup> OCC's current periodic reporting requirements for members, set forth in existing Rules 216, 306, 308 and 310(a)-(c), would be consolidated in proposed Rule 306B.

<sup>34</sup> OCC proposes a conforming change to its Rule 609 regarding the imposition of intraday margin. Specifically, OCC proposes to expand the grounds for imposing additional margin requirements to contemplate not only a member's financial position, but also its operational and risk management conditions. Similarly, OCC proposes to add a statement to current Rule 311 (renumbered as proposed Rule 305) authorizing the imposition of protective measures based on a review of a member's risk management policies, procedures, and practices.

of its current rules regarding the imposition of protective measures on its members.<sup>35</sup> OCC proposes to clarify that restrictions on distributions apply to all qualified regulatory capital (as opposed to funds from specific accounts), and to provide that OCC may prohibit a Clearing Member from withdrawing qualified regulatory capital if it is subject to enhanced monitoring and surveillance under OCC's watch level reporting process or the distribution could increase OCC's credit or liquidity risk.<sup>36</sup> Further, the proposal would permit OCC to impose activity restrictions as additional protective measures.<sup>37</sup> The proposed changes would link certain restrictions on activities to the potential risks posed by that Clearing Member (e.g., limiting transactions that increase credit or liquidity risk).<sup>38</sup> OCC also proposes to adopt a new Rule 307C that would authorize it to impose protective measures in the form of additional operational, personnel, financial resource, or risk management requirements.

With regard to disciplinary actions, OCC proposes to increase the potential fines for minor rule violations (e.g., increasing the fine for a first occasion from \$300 to \$1500).<sup>39</sup> Additionally, the proposed rules would reduce the number of minor rule violations within a twenty-four month period that would result in a disciplinary proceeding from four to three violations. OCC also proposes to modify its current Rule 209 to require that any fine levied by

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<sup>35</sup> OCC's current Rules 304 (restrictions on distributions) and 305 (restrictions on certain transactions, positions, and activities) would be renumbered as proposed Rules 307A and 307B, respectively.

<sup>36</sup> OCC would also remove certain distinctions from its current rules such that restrictions on distributions would apply consistently across member types.

<sup>37</sup> Currently, OCC may impose such restrictions based on certain broad determinations. The proposed change would align the threshold with the terms of proposed Rule 307.

<sup>38</sup> OCC also proposes to remove a non-exhaustive list of situations in which OCC may impose protective measures.

<sup>39</sup> In addition to the modification described here, OCC proposes to consolidate rules regarding minor rule violations. Specifically, OCC proposes to relocate rule 1201(b), 215(e) and 215(f) and Interpretation and Policy .01 to proposed Rule 1203. Further, current Rule 1203 would be renumbered as proposed Rule 1204.

OCC for a minor rule violation that has not been timely contested will be due and payable immediately upon notice as opposed to within five business days following the end of each calendar month.<sup>40</sup>

### **III. DISCUSSION AND COMMISSION FINDINGS**

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.<sup>41</sup> After carefully considering the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the proposal is consistent with Exchange Act sections 17A(b)(3)(B), (F), and (G)<sup>42</sup> as well as Rules 17Ad-22(e)(2)(i) and 17Ad-22(e)(18),<sup>43</sup> as described in detail below.

#### **A. Consistency with Section 17A(b)(3)(B) of the Exchange Act**

Section 17A(b)(3)(B) of the Exchange Act requires that the rules of a clearing agency provide, among other things, that any registered broker or dealer, bank may become a participant in such clearing agency.<sup>44</sup> OCC's rules currently allow for registered broker-dealers to become members if they meet the applicable membership requirements. As described above, OCC proposes to expand the list of entities eligible for membership to include banks. Such expansion includes the description of specific standards for banks to become Clearing Members. These standards, including bank-specific financial thresholds, operational requirements, and risk

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<sup>40</sup> In addition to the modification described here, OCC proposes to renumber current Rule 209 as proposed Rule 210.

<sup>41</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>42</sup> 15 U.S.C. 78q-1(b)(3)(B), 15 U.S.C. 78q-1(b)(3)(F), and 15 U.S.C. 78q-1(b)(3)(G).

<sup>43</sup> 17 CFR 240.17Ad-22(e)(2)(i) and 17 CFR 240.17Ad-22(e)(18).

<sup>44</sup> 15 U.S.C. 78q-1(b)(3)(B).

requirements, are consistent with the types of standards for other entities already eligible for clearing membership with OCC, such as broker-dealers and futures commission merchants. The Commission believes, therefore, that the proposal is consistent with the requirements of section 17A(b)(3)(B) of the Exchange Act.

B. Consistency with Section 17A(b)(3)(F) of the Exchange Act

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that a clearing agency's rules are designed to promote the prompt and accurate clearance and settlement of securities transactions and are not designed to permit the unfair discrimination in the admission of participants or among participants in the use of the clearing agency.<sup>45</sup>

As described above, OCC proposes to align and strengthen its financial responsibility standards for members. OCC also proposes to modify its operational requirements for members to (i) reflect changes in technology (e.g., allowing for reliance on electronic signatures); (ii) remove provisions no longer applicable to current practice (e.g., the use of authorization stamps or designation of a physical location as a clearing office); and (iii) expand requirements with regard to members' operational capability, personnel, and reporting, as well as testing (e.g., participation in business continuity testing). The Commission believes that such enhancements to OCC's financial and operational standards for Clearing Members should help to ensure that OCC's Clearing Members are capable of meeting their obligations to OCC, which in turn will help ensure that OCC continues to promote the prompt and accurate clearance and settlement of securities transactions.

Further, OCC proposes to consolidate its admission procedures and requirements and modify such admission procedures and requirements to help streamline the application review process. The Commission believes that such streamlining should promote consistent application across membership types, which, in turn may reduce the likelihood of unfair discrimination in

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<sup>45</sup> 15 U.S.C. 78q-1(b)(3)(F).

the admission of OCC's Clearing Members. OCC also proposes to amend its conditions for member admission (e.g., an applicant must notify OCC in writing if it is or becomes subject to Statutory Disqualification), and directly address voluntary membership termination.

The Commission believes, therefore, that the proposal is consistent with the requirements of section 17A(b)(3)(F) of the Exchange Act.

C. Consistency with Section 17A(b)(3)(G) of the Exchange Act

Section 17A(b)(3)(G) of the Exchange Act requires, among other things, that the rules of a clearing agency provide that its participants shall be appropriately disciplined for violation of any provision of the rules of that clearing agency by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, or any other fitting sanction.<sup>46</sup>

As described above, OCC proposes to broaden its authority to impose protective measures on Clearing Members who may pose a risk to OCC. Such measures include the imposition of financial obligations, such as additional margin requirements, as well as activity restrictions. OCC also proposes to raise fines, reduce the threshold for instituting a disciplinary proceeding, define when fines for uncontested violations become due, and make other strengthening changes to the way it enforces and addresses minor rule violations. The Commission believes that strengthening OCC's ability to respond to risks and violations in this way is consistent with the requirements of section 17A(b)(3)(G) of the Exchange Act.

D. Consistency with Rule 17Ad-22(e)(2)(i) of the Exchange Act

Rule 17Ad-22(e)(2)(i) requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent.<sup>47</sup>

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<sup>46</sup> 15 U.S.C. 78q-1(b)(3)(G).

<sup>47</sup> 17 CFR 240.17Ad-22(e)(2)(i).

OCC's existing membership eligibility requirements, admissions criteria, and ongoing standards are scattered across OCC's By-Laws and Rules. As described above, OCC proposes to reorganize, relocate, or consolidate such rule text into chapters 2 and 3 of OCC's Rules (along with supporting definitional changes to chapter 1 of OCC's rules). Further, OCC proposes other non-substantive wording changes throughout its rules (e.g., changing "will" to "shall"). Because such changes would improve the readability of OCC's publically available rules, which, in turn, would make such rules clearer and more transparent to members and the public, the Commission believes that such changes are consistent with Rule 17Ad-22(e)(2)(i).<sup>48</sup>

E. Consistency with Rule 17Ad-22(e)(18) of the Exchange Act

Rule 17Ad-22(e)(18) requires a covered clearing agency to establish, implement, maintain, and enforce policies and procedures reasonably designed to, among other things, establish objective, risk-based, and publically disclosed criteria for participation, which permit fair and open access by direct participants, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and to monitor compliance with such participation requirements on an ongoing basis.<sup>49</sup>

As stated above, OCC proposes to align and strengthen its financial responsibility standards for members. OCC also proposes to modify its operational requirements for members to (i) reflect changes in technology (e.g., allowing for reliance on electronic signatures); (ii) remove provisions no longer applicable to current practice (e.g., the use of authorization stamps or designation of a physical location as a clearing office); and (iii) expand requirements with regard to members' operational capability, personnel, and reporting, as well as testing (e.g., participation in business continuity testing). The Commission believes that such enhancements to

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<sup>48</sup> 17 CFR 240.17Ad-22(e)(2)(i).

<sup>49</sup> 17 CFR 240.17Ad-22(e)(18).



OCC's financial and operational standards should help to ensure that OCC's membership has sufficient financial resources and robust operational capacity to meet obligations for participation in OCC. Further, OCC proposes to modify and consolidate its admission procedures and requirements to help streamline the application review process. The Commission believes that such streamlining should promote consistent application across membership types, which, in turn, would permit fair and open access by direct participants.

Therefore, the Commission believes, therefore, that the proposal is consistent with the requirements of Rule 17Ad-22(e)(18) of the Exchange Act.<sup>50</sup>

## **VI. CONCLUSION**

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act, and in particular the requirements of section 17A of the Exchange Act<sup>51</sup> and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to section 19(b)(2) of the Exchange Act,<sup>52</sup> that the proposed rule change (SR-OCC-2023-002) be, and hereby is, approved

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>53</sup>

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

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<sup>50</sup> 17 CFR 240.17Ad-22(e)(18).

<sup>51</sup> In approving this proposed rule change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>52</sup> 15 U.S.C. 78s(b)(2).

<sup>53</sup> 17 CFR 200.30-3(a)(12).